November 10, 2010

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc.*, MB Docket No. 10-56

Dear Ms. Dortch:

Comcast Corporation recently responded to a letter filed by DIRECTV, DISH Network L.L.C., and the American Cable Association ("ACA") regarding online programming.[1] Our letter discussed the use of online programming in connection with a dispute involving linear programming. Specifically, we addressed FOX Network's efforts to block those with Cablevision IP addresses from accessing FOX content on its affiliated websites, Fox.com and Hulu.com. We pointed out that a combined Comcast-NBCU would have an even greater incentive and ability to engage in similar conduct than does FOX, which is unaffiliated with any multichannel distributor.[2]

Yet Comcast fails to address its own incentive and ability to engage in such anticompetitive conduct with respect to online programming. Rather, it merely states that the circumstances surrounding FOX's denial of online programming were "unclear."[3] This is no answer. The point of our submission was obviously not to discuss the details of FOX's dispute with Cablevision, but rather to use FOX's conduct as an illustration of points we have made throughout this proceeding: that the lines between linear and online programming continue to blur; that the proposed transaction will increase Comcast's ability to act anticompetitively in this space; and that the Commission must take those facts into account when considering the likely effects of the proposed transaction.[4]

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[1] *See* Letter from Michael H. Hammer to Marlene H. Dortch, MB Docket No. 10-56 (Oct. 25, 2010) ("Comcast Oct. 25 Letter").

[2] *See* Letter from Susan Eid, Jeffrey Blum, and Ross J. Lieberman to Chairman Julius Genachowski, MB Docket No. 10-56 (Oct. 20, 2010).

[3] Comcast Oct. 25 Letter at 3. Any lingering uncertainty Comcast may have with respect to Hulu's denial of content could certainly be resolved through consultation with its partner, NBCU, which owns 32% of Hulu, yet has not volunteered any information on the event.

[4] *See, e.g.*, Comments of DIRECTV, Inc. at 28-34; Petition to Deny of DISH Network L.L.C. and EchoStar Corporation at 3-26 (each filed on June 21, 2010).

Comcast also attempts to allay any concerns arising from this episode by reiterating its assurance that "Comcast has no intention of changing NBCU's relationship with Hulu or NBCU's decision to provide certain of its content to Hulu."[5] Comcast's stated intentions are less relevant than its *incentive and ability to act*, which would very much change as a result of this transaction.[6] Moreover, the assurance cited by Comcast came with the significant caveat that "the dynamism of the online video sector makes it unwise to set in stone any plans with respect to putting content online in any particular fashion," and the assertion that Comcast/NBCU must "preserve the freedom" to adapt to changing circumstances.[7] The Commission can ill afford to rely upon such an insubstantial and qualified intention.

Comcast spends the vast majority of its letter dismissing the relevance of the FOX-Cablevision retransmission dispute to its transaction. But that dispute is plainly relevant here, because Comcast would have an even greater incentive and ability to withhold signals than even FOX did due to its ability to recoup programming losses through subscribership gains. Comcast asserts that it would be unprofitable for the combined entity to engage in a retransmission foreclosure strategy, and that no opponent has credibly challenged this conclusion.[8] Yet FOX plainly found a foreclosure strategy profitable even without the distribution assets Comcast possesses. Moreover, as several experts have explained, price increases, not foreclosure, are the real concern in this proceeding.[9] The FOX-Cablevision dispute validates the viability of a *threat* of foreclosure, which in turn places upward pressure on prices.

Comcast also argues that the Commission should take comfort from the fact that neither Comcast nor NBCU has ever had a retransmission consent impasse that resulted in a denial of programming.[10] Yet the applicants' behavior *before* vertically integrating says nothing about

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[5] *See* Comcast Oct. 25 Letter at 3 (quoting Letter from James L. Casserly to Marlene H. Dortch, MB Docket No. 10-56, at 2 (Aug. 20, 2010) ("Comcast Aug. 20 Letter")).

[6] Even if Comcast were right that NBCU's relationship with Hulu.com would not change, there is no evidence that FOX changed its relationship with Hulu in order to deny content to certain online viewers.

[7] Comcast Aug. 20 Letter at 2. Comcast repeated this caveat about its plans for NBCU's online programming in a recent ex parte. *See* Letter from Michael H. Hammer to Marlene H. Dortch, MB Docket No. 10-56, at 1-2 (Nov. 8, 2010) (arguing that the new NBCU will need the ability to "change distribution methods as business models evolve, as has occurred with Hulu even during the pendency of the transaction").

[8] Comcast Oct. 25 Letter at 2.

[9] *See* Kevin M. Murphy, "Economic Analysis of the Impact of the Proposed Comcast/NBCU Transaction on the Cost to MVPDs of Obtaining Access to NBCU Programming," attached to DIRECTV Comments as Exhibit A; William P. Rogerson, "Economic Analysis of the Competitive Harms of the Proposed Comcast-NBCU Transaction," attached to ACA Comments as Exhibit A.

[10] Comcast Oct. 25 Letter at 2-3.

their incentives and likely behavior *after* combining assets. Moreover, although there are industry-wide concerns related to retransmission consent, Comcast/NBCU would fall into a special category of distributors integrated with broadcast stations in their distribution footprint. *Every single member* of this category has been subject to arbitration in the case of a negotiating impasse.[11]

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As it has throughout this proceeding, Comcast asks the Commission to ignore market evidence before its eyes and instead simply accept Comcast's assurances. Yet the warning signs provided by current events are clear and cannot be overlooked. In the absence of meaningful conditions, the MVPD industry will find itself facing a similar (or worse) situation in the future.

Respectfully submitted,

DIRECTV

By: *__/s/__________________________*
Susan Eid
Sr. Vice President, Government Affairs

DISH NETWORK L.L.C.

By: *__/s/__________________________*
Jeffrey H. Blum
Senior Vice-President and Deputy General Counsel

AMERICAN CABLE ASSOCIATION

By: *__/s/__________________________*
Ross J. Lieberman
Vice President of Government Affairs

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11 *See General Motors Corp., Hughes Electronics Corp., and The News Corporation, Ltd.*, 19 FCC Rcd. 473, App. F, Section III (2004); *News Corp. and Liberty Media Corp.*, 23 FCC Rcd. 3265, App. B, Section IV (2008).